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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1089 98

SARAH PRINCE,

Appellant,

vs.

COMMONWEALTH OF MASSACHUSETTS.

APPEAL FROM THE SUPERIOR COURT OF MASSACHUSETTS FOR THE COUNTY OF PLYMOUTH.

STATEMENT AS TO JURISDICTION.

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STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 (1) of Rules of the Supreme Court of the United States, as amended April 6, 1942, appellant files a statement as to jurisdiction disclosing the bases upon which it is contended that the Supreme Court has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code (28 U. S. C. 344 (a)).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April

26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Massachusetts Legislation Questioned.

In these cases the validity of statutes of the Commonwealth of Massachusetts are called in question as being unconstitutionally construed and applied to the facts and circumstances of these cases. The statutes read: "(Massachusetts General Laws, Chapter 149, Section 80:) PENALTY FOR FURNISHING ARTICLES TO BE ILLEGALLY SOLD BY MINORS ENGAGED IN STREET TRADES, OR AIDING IN VIOLATION OF SECTIONS 69-73.—Whoever furnishes or sells to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months, or both. (1913, 831, sec. 22)

"(Section 81:) PENALTY ON PARENT OR GUARDIAN, ETC.—Any parent, guardian or custodian having a minor under his control who compels or permits such minor to work in violation of any provision of section sixty to seventy-four, inclusive, or knowingly certifies to any materially false statement for the purpose of obtaining the illegal employment of such minor, shall for a first offense be punished by a fine of not less than two nor more than ten dollars or by imprisonment for not more than five days, or both; and for a subsequent offense by a fine of not less than five nor more than twenty-five dollars or by imprisonment for not more than ten days, or both. (1913, 831, sec. 23.)"

Timeliness.

The judgment of conviction sought to be reviewed was entered on February 11, 1942, but execution of the sentence was stayed but agreeably to Mass. G. L. (Ter. Ed.) c 279 paragraph 4 noted below until the exceptions alleged by the appellant ordered have been determined by the Supreme Judicial Court on February 27, 1942, and March 30, 1942. On February 15 the appellant's exceptions were overruled as to the two cases (see opinion). A copy of the opinion rendered by the Supreme Judicial Court in this case is annexed.

Appeal is presented herewith, to wit, on May 14, 1943. This application is made to the Superior Court rather than to the Supreme Judicial Court, for the reason that under Massachusetts practice the record remains at all times in the former court, so that the final judgment is that of the Superior Court, not that of the Supreme Judicial Court.

Davis v. *L. L. Cohen Company, Inc.*, 268 U. S. 638, 639;
Myers v. *International Trust Company*, 273 U. S. 380, 381;
New England Railway Company v. *Boston and Albany Railway Company*, 279 U. S.;
Snyder v. *Massachusetts*, 291 U. S. 97, 103.

In civil cases under the Massachusetts practice one judgment is ordinarily entered in the Superior Court while exceptions are pending in the Supreme Judicial Court; if the Supreme Judicial Court overrules the exceptions, the Superior Court then prepares to enter the appropriate judgment. In non-capital criminal cases, however the sentence, which is regarded as constituting the judgment, is imposed immediately after the finding of guilty, though the judge imposing sentence may in his discretion stay its execution directing the pendancy of exception. This differ-

ence in practice between civil and criminal cases was stated as follows in *Commonwealth* v. *Millen*, 290 Mass. 406 (at page 411):

> "Under our system, by which civil and criminal cases at law have commonly come to this court upon a bill of exceptions, the original theory was that all exceptions taken had to be disposed of before final judgment could be entered.
>
> "The final judgment in criminal cases is called sentence.
>
> "Tyndale *v.* Stanwood, 186 Mass. 59;
> "McCusker *v.* Geiger, 195 Mass. 46, 51, 52;
> "Sasserno *v.* Sasserno, 240 Mass. 583, 585;
> "Bartlett *v.* Roosevelt, Inc., 258 Mass. 494, 497."

Gen. Law 279, Section 4 is as follows:

> "Sentence shall be imposed upon conviction of a crime, except as otherwise provided in section forty-seven in case of a conviction of a capital crime, although exceptions have been alleged or an appeal taken. If sentence is imposed upon conviction of a crime not punishable by death, the reservation, filing or allowance of exceptions or the entry of an appeal shall not stay the execution of the sentence unless the justice imposing it, or a justice of the supreme judicial court, files a certificate that in his opinion there is reasonable doubt whether the judgment should stand; and if execution of sentence is so stayed justice may at the same time make an order relative to the custody of the prisoner or for admitting him to bail."

As will be observed, the stay granted under this statute does not vacate the judgment but merely suspends its operation. If the defendant should now elect not to carry the case further but to pay the fine imposed at the trial, this would be in pursuance of the judgment then entered. No new sentence—analogous to a final decree after rescript in equity—would be necessary. It is true that the Superior

Court, after the coming down of the rescript, still has the power to reduce the sentence if some very exceptional cause is shown (*Commonwealth* v. *Lobel*, 187 Mass., 288; *Commonwealth* v. *O'Brien*, 175 Mass. 37). In the absence, however, of anything to show that either party seeks to revoke this power of revision, the finality of the judgment for purposes of appeal is not affected.

Southern Ry. Co. v. *Cliff*, 260 U. S. 316;
Des Moines National Bank v. *Bennet*, 283 U. S. 813, 284 U. S. 239 in Robertson and Kirham's Jurisdiction of the Supreme Court of the United States, p. 71.

It follows that the final judgment in the cases at bar so far as concerns the right of appeal to the Supreme Court of the United States was the judgment entered by the Superior Court.

The time for claiming the appeal, however, would not begin to run so long as it remained possible that the judgment might be reversed through the sustaining of the exceptions, i. e. not until the overruling of the exceptions on February 15, 1943 and entry thereof in the Superior Court on February 17, 1943.

Andrews v. *Virginian Ry. Company*, 248 U. S. 272.

Opinion.

The opinion of the Supreme Judicial Court of Massachusetts is attached hereto as appendix to this statement. It also appears in the record at pages — to —.

Statement of Nature of the Case and Rulings of Court Bringing Case Within Jurisdictional Provisions Relied Upon.

In the District Court of Brockton, Massachusetts, the appellant, Sarah Prince, was charged by complaint with

violation of General Laws, Ter. Ed., Chapter 149, Sections 79, 80 and 81. The conviction resulting from the complaint filed under Section 79 was reversed by the Supreme Judicial Court of Massachusetts at the time that the other two convictions were sustained, and hence only the latter two are here pertinent, and the complaints thereunder are as follows:

"(Under Section 80:) To the District Court of Brockton holden at Brockton for the transaction of criminal business within the County of Plymouth, GEORGE S. PERKINS of Brockton, in said County of Plymouth, in behalf of the Commonwealth of Massachusetts, on the second day of January in the year of our Lord one thousand nine hundred forty-two, on oath complains that SARAH PRINCE of Brockton in said County of Plymouth, on the eighteenth day of December in the year of our Lord one thousand nine hundred forty-one, at Brockton in said County of Plymouth did furnish to one Betty M. Simmons, a girl under the age of eighteen years, certain articles, to wit: magazines, she, the said Sarah Prince well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully."

"(Under Section 81: Same in substance as the above complaint except for the following:) was the custodian of Betty M. Simmons, a minor, and did permit the said Betty M. Simmons to work contrary to law."

Appellant filed and urged a motion to dismiss and/or quash the three charges (R. 3-5), which was overruled and exception allowed (R. 5).

Appellant then pleaded "not guilty" (R. 3).

At conclusion of the Commonwealth's evidence, the appellant renewed her motions to dismiss and/or quash as to all three complaints and filed her motion for directed finding on all three complaints (R. 5-7). The court de-

clined to rule on this motion (R. 7). At conclusion of all the evidence, appellant again renewed her motions to dismiss and/or quash, and her motion for directed finding, and the court denied both, whereupon appellant duly excepted (R. 7).

Under grounds two through six inclusive of the motion to dismiss and motion for directed finding, and also under number 13 of the requested rulings, appellant attacked the statutes on grounds that on their face, by their terms, and as construed and applied, they abridged appellant's rights of freedom of speech and of press and freedom to worship Almighty God, contrary to the first and fourteenth amendments to the United States Constitution (R. 3-6, 9).

The Supreme Judicial Court of Massachusetts considered each one of the appellant's exceptions noted to the action of the lower courts in overruling said motions and refusing to enter the requested findings, and then overruled all of said exceptions under the two complaints here involved (R.). The Court held that on its face and by its terms the statute did not abridge the rights of freedom of press and speech, contrary to the Federal Constitution (appendix p. , R.). The court held that as construed and applied the rights of freedom of speech and of press were not abridged contrary to the first and fourteenth amendments (appendix p. , R.). The court held that freedom to worship Almighty God was not impaired by the conviction and judgment, contrary to the first and fourteenth amendments to the United States Constitution (appendix p. , R.).

Statement of Facts.

Appellant, one of Jehovah's witnesses, is an ordained minister of the gospel of God's kingdom (R. 15). The evidence shows that appellant was the aunt and custodian

of one Betty M. Simmons, a girl eight years of age (R. 15). About 8:45 p. m. on the day above mentioned, appellant took Betty Simmons with her to the corner of Legion Parkway and Main Street, public streets in the busines section of the City of Brockton. The evidence shows that appellant furnished the little girl with a cloth bag on which was printed:

"Watchtower explains the Theocratic Government"

"5c a copy"

"Watchtower—Consolation—5c a copy"

In the bag, which was suspended from her shoulder by a cloth strap, were copies of the publications "Watchtower" and "Consolation", and she also held up a copy of each so that pedestrians could see them, and at the same time saying, "Remedy for World Distress" "Read the Watchtower" (R. 15).

Betty Simmons explained her presence on the street and her reason for engaging in this work, testifying, "I love the Lord and He commands us to"; and also she declared that such was her way of worship. She stated that she was not selling the magazines, but that she would give them to whoever agreed to read them. Furthermore, she said that she would accept money contributions from persons receiving the magazines who desired to make a small contribution to cover the cost of printing more like literature, which money she said she would turn over to the appellant. The evidence shows that Betty was on the street that evening by her own request over the appellant's objections, and that while there she did not actually distribute any magazines or take any contributions, though such was her admitted intention (R. 15, 19).

There is no evidence that the child or the appellant was blocking, or in any manner interfering with, normal movement and flow of traffic on the sidewalk. Neither were they

deporting themselves in an obstrusive or indecent manner, but on the contrary it was shown that they were standing together on the edge of the walk displaying the literature in the manner above described.

Both magazines named are Scriptural periodicals containing Bible references, and are not subversive, nor do they advocate the use of force by other persons or anyone to overthrow the government. *The Watchtower* strictly adheres to the Bible as authority for its utterances, being strictly free and separate from all religion, parties, sects or other worldly organizations. It is wholly and without reservation for the Kingdom of Jehovah God under Christ His beloved King. It is not dogmatic, but invites careful and critical examination of its contents in the light of the Scriptures. It does not indulge in controversy and its columns are not open to personalities. *The Watchtower* advocates that Jehovah God is the only true God, Maker of heaven and earth, and the Giver of life to His creatures; that God created the earth for man, originally made perfect, and placed man upon it; that man willfully disobeyed God's law and was sentenced to death, and by reason thereof, death came upon all the descendants of the first man, Adam; that Jesus Christ was made human through miraculous conception and birth and suffered death in order to provide a redemptive price, for those only of mankind who desire to serve Jehovah God and live; that Jesus Christ was thereafter raised unto heaven and placed at the right hand of Jehovah God, His Father, to be the King of Jehovah's everlasting government, The THEOCRACY, and thereafter proceeded to oust the adversary Satan and his legion of wicked angels from heaven; that Satan is now attempting to turn all mankind away from God and into destruction and violently to oppose and destroy those who dare to act as witnesses for Jehovah God, His Word, and His Kingdom, as did Christ Jesus when on earth; that

Christ Jesus is the great Executioner for the Supreme Judge and is now proceeding to execute judgment of everlasting destruction upon Satan's governments and all supporters thereof, invisible and visible in the earth, in Jehovah's battle at Armageddon, which is very near, following which Act of God there will be established completely and exclusively in the earth Jehovah's righteous and permanent government, His "new world", for which Christ Jesus taught all true servants and worshipers of Jehovah to pray. An examination of *The Watchtower* conclusively proves that its pages from cover to cover of each issue contain a written sermon explaining the foregoing matters in greater details.

While thus standing on the street they were accosted by George S. Perkins, supervisor of attendance at the public schools. He testified that he told appellant she was violating the law, and warned her that she must "get off the street" with the child or else he would have to arrest her. Appellant replied that both she and the child had a constitutional right to do that work on the street, and that they did not intend to leave. Later that evening, just as appellant and the child were leaving their post preparing to go home, Perkins again warned appellant; whereupon she referred him to Roger M. Flint, the man in charge of the local distribution of the literature, who at that time was with appellant. Appellant left the two men talking on the street and took the child home. Later appellant was arrested on complaint signed by Mr. Perkins and growing out of the above incident. R. 21.

Appellant testified:

> "Jehovah God has commanded the people to come out of the religions, Catholic, Protestant, Jew or Gentile. That is the first thing that is going down, and all who are in with religion will perish with religion. It is on its last skids now. That

is why we are on the street corners. Christianity will survive, not religion. The destruction of the wicked at that time will be tremendous, far exceeding anything in human history. The nations of Christendom are forgetters of God. His name has been blasphemed and reproached down through the ages. But he says, 'They shall know that I am Jehovah.' For no other reason was I on the street corner, and my children, but to tell the people of the one place of safety, that is in the kingdom of God under Christ that we have prayed for. Most people pray automatically for that kingdom." (R. 20.)

Appellant further testified that "it is not a selfish work or carried on for any pecuniary gain" (R. 20), but was done entirely without profit. Contributions received from the people were turned over to Roger Flint, the local company servant and the individual responsible for the distribution of the magazines, who in turn sent the money to the Watchtower Bible and Tract Society in Brooklyn, New York. R. 22.

The evidence further showed that appellant regarded it as her solemn obligation to Almighty God thus to preach the gospel and teach the children under her care to do likewise. She said that she had been engaged in that work for more than 31 years. R. 19.

Grounds and Decisions Sustaining Jurisdiction and Showing That Substantial Federal Questions Are Involved.

FIRST.

The Statute in question is unconstitutional on its face and as construed and applied because abridging and denying appellant's right to freedom of press, freedom of speech, and freedom to worship Almighty God according to His commands written in the Bible and the dictates of her conscience, contrary to the First and Fourteenth Amendments to the United States Constitution.

Decisions Cited.

Lefebvre, In re, — N. H. —, 20 A. 2d 185;
State v. *Richardson,* — N. H. —, 27 A. 2d 94;
Meyer v. *Nebraska,* 262 U. S. 390;
Pierce v. *Society of Sisters,* 268 U. S. 510;
Allgeyer v. *Louisiana,* 165 U. S. 578;
Berea College v. *Kentucky,* 211 U. S. 45, 67;
Lawton v. *Steele,* 152 U. S. 133;
United States v. *Carolene Prod. Co.,* 304 U. S. 144;
Schneider v. *State,* 308 U. S. 147;
Herndon v. *Lowry,* 301 U. S. 242;
Bridges v. *California,* 314 U. S. 252;
Jamison v. *State of Texas,* —U. S. —, 63 S. Ct. 669;
Hague v. *C. I. O.,* 307 U. S. 496;
Thornhill v. *Alabama,* 310 U. S. 88;
Carlson v. *California,* 310 U. S. 106;
Lovell v. *Griffin,* 303 U. S. 444;
Cantwell v. *Connecticut* 310 U. S. 296.

SECOND.

The statute as construed and applied operates to prohibit appellant from teaching the children in her charge the commandments of JEHOVAH GOD, *and makes it unlawful for children to carry out such requirements, in contravention of the First and Fourteenth Amendments to the United States Constitution.*

Decisions Cited.

Skinner v. *Oklahoma* 316 U. S. 535.
Lefebvre, In re supra.
State v. *Richardson supra.*
Lovell v. *Griffin supra.*
Schneider v. *State supra.*
Cantwell v. *Connecticut supra.*
Jamison v. *State of Texas supra.*

Discussion of Statute in Question and of Federal Questions Presented on This Appeal.

This honorable court is now called upon to exercise its power to review a judgment of the state court for the purpose of protecting the most sacred of all human rights from encroachment by misapplied laws. That right is the God-given duty and privilege of parents to raise their children up in the nurture and admonition of the Lord and to direct the children in their proper worship or service of Jehovah God.

The court below encroached unlawfully upon this right by applying a statute directed at commercial exploitation of children through unlawful *child labor*. It has been wrongly misinterpreted by the police officials of the City of Brockton to cover the charitable preaching, worship and service to Almighty God by appellant and minor children under her charge. The *superior right* of appellant properly to direct the spiritual welfare of children in her charge by permitting them to engage in Godly practices not inimical to their own welfare or the welfare of the state cannot be overcome by misapplication of an ordinance directed at other activity. The undisputed evidence shows that the acts engaged in by appellant and the minor child were acts of worship of Jehovah God. Such activity does not violate the laws of morality, nor infringe personal rights of others, nor present a clear and present danger against the peace and dignity of the state. The judgment of the court below is void and should be reversed because appellant's unalienable constitutional rights have been illegally abridged by wrongful application of the statute.

The undisputed evidence shows that appellant did not profit from the activity of the child in distributing the literature. There is no showing or contention that the activity in which she was engaged was commercial. The

appellant did not compel her charge to engage in the service of the Lord but permitted the child to act as one of Jehovah's witnesses only when she volunteered. She did not object to the child's engaging in such activity. The child had entered into a covenant with Jehovah to serve Him and considered it her bounden duty to preach the gospel by publicly presenting it upon the streets by means of distribution of the literature in question.

Marriage and childbearing is God's arrangement for all humankind that shall live on the earth. It is beyond the power of the state to interfere with or abridge the right of all persons within its boundary to procreate. Even this right cannot be denied to criminals. *Skinner* v. *Oklahoma*, 316 U. S. 535. *A fortiori* the state cannot interfere with and abridge the parents' right to bring up children in a way acceptable to their own judgment so long as it is not inimical to the welfare of the children or the well-defined interest of the state.

The children must be taught by the parents to be obedient to the Lord and His commandments or rules found in the Bible: Upon the parents is placed the duty to teach their children morality, honesty, integrity, obedience and meekness and, above all, the commandments of Almighty God, JEHOVAH.

Upon all parents who are in a covenant to do God's will there is laid the duty and specific obligation to teach their children the Word of God and it is the duty of the children to obey their parents who give such instruction. The parent will be diligent to bring his children to congregations where the commandments of Almighty God are studied and discussed. The children are permitted to participate therein so that they might learn the way of righteousness and how they might receive life everlasting. When Moses stood before Jehovah's typical covenant people on the

plains of Moab and delivered the instruction from Jehovah he knew that soon thereafter the children would take the place of their parents in the ranks of God's army. Forcefully he urgently reminded the parents of their duty to their children. He urged upon them diligence and faithfulness in teaching the truth to their children. That was important then; the fulfillment thereof is of greater importance now. See Deuteronomy 4:9, 10; 6:5-8; 11:18-21; 12:28; 32:46. The apostle of Christ Jesus also states the command thus: "And, ye fathers, provoke not your children to wrath; but bring them up in the nurture and admonition of the Lord." (Ephesians 6:4) The children also are commanded: "Children, obey your parents in the Lord; for this is right. . . Honour thy father and mother, which is the first commandment with promise, that it may be well with thee, and thou mayest live long on the earth."—Ephesians 6:1-3.

"Nurture" means to discipline and train the child in the way of righteousness; and such way of righteousness God has marked out in His Word. "Admonish" means to teach and instruct; to counsel and advise the children of and in accord with the expressed will of God set forth in the Bible. Parents who failed thus to instruct their children would be provoking their children to do wrong or to wrath. The words "right" and "righteous" are from the same root and mean the same thing.

Appellant was glad to discharge her responsibility under the law to instruct her little charge in righteousness and obedience; and the child was meekly and joyfully obedient to the commandments of the Lord. The duty of the parent does not end with instruction. If the child indicates a willingness to do the will of God, the parent is under obligation to aid the child in taking the necessary steps to serve the Lord by doing the overt act of participating in the

positive command of preaching the gospel of God's kingdom to others. Appellant did this and took the child with her in the preaching activity.

To permit the child to *believe* in righteousness and to refrain from *practicing* right is entirely wrong. "For as the body without the spirit is dead, so faith without works is dead also." (James 2:26). "Let your light so shine before men, that they may see your good works, and glorify your Father which is in heaven." (Matthew 5:15, 16). It is therefore the duty and privilege of parents and children to *practice what they preach* by consistently acting as Jehovah's witnesses before men. This the appellant and her minor charge have done on the streets of their community by distributing the *Watchtower* magazine to persons of goodwill toward Almighty God.

In this they are doing the will of Jehovah and by their conduct they say: "I delight to do thy will, O my God." (Psalm 40:8) "Thy word is a lamp unto my feet, and a light unto my path. . . . My tongue shall speak of thy word; for all thy commandments are righteousness."—Psalm 119:105, 142, 144, 172.

It cannot be said that the child is too young to be permitted thus to worship and serve Jehovah God. The state has no authority or power to tell a child at what age it can begin practicing the requirements of Almighty God taught it by the parent. Thus to allow the state to intervene would forever destroy and end the unalienable American heritage of the right to maintain a home, raise children and follow generally the pursuits of happiness enjoyed by a free people. The state can intervene with respect to the care and education of the child only when the parent "neglects" or "misuses" the child to such an extent as to endanger its welfare and the interests of the state. As long as the parent does not violate this fundamental rule the state cannot in-

terfere with the "religious" practices of the parents and children.

It is not contended that appellant neglected her duty in bringing up the child. It is not contended that she is not providing her a proper home or education, or permits her to run at large. It is not contended that she is exploiting the child or keeping her away from public schools. The undisputed evidence shows that the only act made the basis of the complaint is that she permitted the child to worship Jehovah God according to the desires of her heart and mind and the dictates of God's Word by distributing the magazine and accepting money contributions.

There is no evidence that there was a sale or that the child was offering or exposing for sale periodicals or magazines; on the contrary, the evidence clearly shows that she was preaching the gospel. "Sale" is necessarily confined to a commercial project, such as purveying of ordinary articles of merchandise. It cannot and does not include the distribution of Bible literature by one of Jehovah's witnesses simultaneously receiving money contributions. Money so received is similar to that received by recognized religious organizations or clergymen in the church edifices. When one goes to such church buildings and contributes twenty-five cents, more or less, it cannot be said that the sermon was "sold" to him. The charitable nature of the activity is not changed by the fact that the one contributing the money *thought* or testified that he "bought" a sermon or concluded that it was *sold* to him.

An examination of the entire evidence shows that appellant's activity is charitable and non-profit. It is not contended that any of the literature was held back from anyone for want of money contribution. The evidence shows that appellant and her young charge gave away free as many pieces of literature to non-contributors as contributors of money had accepted from them.

There is no contention that appellant individually profited or gained anything from the contributions given to the child. The entire case is based on the false conclusion by the officer who testified that a *sale* was made by the child. Constitutional rights are not dependent upon whether the one exercising them refuses to accept money contributions to aid the good work done by him. If such a distinction is sustained then the purposes of the ordinance to prevent exploitation of children could be circumvented by instructing the children to refuse to accept or offer to accept money contributions. Surely the inherent liberty of the people does not depend upon such a *fine* distinction!

The ordinance can be no more constitutionally applied to appellant than could the ordinance be validly applied to Catholic priests who constantly employ and use "altar boys" in the traditional Catholic mass service throughout the nation and in the City of Brockton. If this law can be sustained as to Jehovah's witnesses, then there is nothing to prevent the states and cities from prosecuting Catholic priests and parents of Catholic children who permit them to act as "altar boys" in the performance of their religious ceremonies and traditional modes of worship.

The act of serving Almighty God by preaching the gospel publicly on the streets is to appellant and her charge and other of Jehovah's witnesses a most sacred practice, and the courts should be reluctant to infringe upon the exercise of that right because of conscience' sake. The situation presented here is much different from that of a child employed to sell newspapers on the streets. Here the child is engaged in the sacred act of witnessing to the name, the honor and the revealed purposes of Almighty God, JEHOVAH. The words of the New Hampshire Supreme Court (*In re Lefebvre*, 20 A. 2d 185) seem appropriate:

> "Loving parents who do their best for their children in support, nurture and admonition are of more worth

than pecuniary means. Righteous and generous motives may be of more importance than notions that chime with majority opinions of what is good form or what is the best method of teaching patriotism. . . . But in view of the sacredness in which the State has always held freedom of religious conscience, it is impossible for us to attribute to the legislature an intent to authorize the breaking up of family life for no other reason than because some of its members have conscientious scruples not shared by the majority of the community, at least provided those scruples are exercised in good faith, and their exercise is not tinged with immorality or marked by damage to the rights of others."

It is noticed that the construction given the terms of the ordinance by the officials of Brockton permits a parent of a child of the prohibited age to allow the child to wander about aimlessly upon the streets with nothing to do without being subject to the terms of the ordinance. At the same time the ordinance is construed in such a manner as to permit the prosecuting of a parent who honestly directs his child in constructive activity for the child's welfare as well as that of the persons to whom the child ministers. Such construction makes the ordinance unreasonable and arbitrary.

Our views on the questions here presented are well summarized by the Supreme Court of New Hampshire in the case of *State* v. *Richardson*, 27 A. 2d 94, involving a statute of that state identical in substance and purpose with the ordinance in question here. The statute (P. L., c. 118, s. 21) provides that boys under ten and girls under sixteen shall not "sell or expose or offer for sale newspapers, magazines, periodicals or other merchandise in any public street or public place." The New Hampshire statute was held to be inapplicable to the identical activity as that here involved. The reasons there expressed present forceful argu-

ment here that for the same cause the ordinance here should be held unconstitutional. Chief Justice Allen said:

> "It is thought that the activity in which the boy under the defendant's leadership was engaged is not within the tenor and spirit of the prohibition of sales in public places. His service was not fairly to be classified as a business enterprise or as work, in the ordinary sense of words. To use a common expression, he was not exploited to help as a source of family income and material resources or to promote the defendant's financial welfare. Any exploitation of the boy was for other than pecuniary ends. He was performing a service under his mother's auspices, and the few cents he received were no impaction on the controlling religious character of his service, so as thereby to transform it into one of employment or work. The money-making feature of his service is too insignificant to receive notice as a factor modifying a strictly religious engagement into one with business attributes. The boy was not a newsboy on the occasions in question, and an occupational element, even of temporary duration, is not to be ascribed to his activity. Nor is there any claim that his education required by law was disturbed or menaced. . . .
>
> "The State's argument that the statute was partly designed to protect the morals of young children by keeping them off the streets and out of public places, is not impressive. So far as concerns the case, the boy was in his mother's custody and general charge. In respect to the statute, it would be a clearly unreasonable discrimination that young persons might be on the streets with nothing to do, while others might not if they had some occupation there.
>
> ". . . The facts do not constitute a mischief or evil which the legislation undertakes to suppress."

In the case at bar the child was preaching, ministering the gospel message, not *selling*. Preaching the gospel of

the kingdom of God is the proclaiming to others the Scriptural truths of and concerning Jehovah God and His Kingdom, The Theocracy, under Christ Jesus. From the Scriptural standpoint it is not unusual that a child should teach and preach the gospel at a very early age. When Jesus was twelve years old and long before He was anointed with God's holy spirit, he preached and taught as "one engaged in His Father's business", i. e., as one of Jehovah's witnesses, in the temple, where he confounded the wise men and astonished them with his understanding and answers. (Consider Luke 2:46-49) Timothy, long before he reached the age of maturity and while yet a small child, also taught and preached. He accompanied the apostle Paul, who preached publicly in the market places, on the streets and from house to house. See Acts 16:1-3; also 1 Timothy 4:12 where Paul writing to his 'son of faith,' Timothy, said: "Let no man despise thy youth; but be thou an example of the believers, in word, in conversation, in charity, in spirit, in faith, in purity." Samuel was consecrated for service in the temple when very small and of tender age.—1 Samuel 1:24; 2:11,28. See also Jeremiah 1:6, 7.

Christ Jesus condemned the Pharisees because of their effort to prevent and ridicule the following of little children after him. He said: "Suffer little children to come unto me, and forbid them not; for of such is the kingdom of God." (Luke 18:16) See also Luke 11:52; Matthew 18:1-6; Psalms 8:2; 148:12, 13; Proverbs 8:32.

Therefore it is unreasonable and unscriptural to contend that it is not proper for a child to engage in publicly giving praise to Jehovah God by acting as His witness in distribution of literature explaining Bible prophecy and present-day fulfillment thereof. It should be borne in mind that this is the primary way that Jehovah's witnesses worship and serve Almighty God and to deny this right to the children through punishing the parent because the children

exercise such right is to deny to them freedom of worship of Almighty God, which freedom alone gives freedom from want and from fear.

The holding of the court below is in conflict with this principle as declared by the Supreme Court of the United States in *Meyer* v. *Nebraska*, 262 U. S. 390, where was set aside a conviction of a person who taught the German language to children in public schools contrary to a state statute. It was held that the statute infringed the right of the individual to marry, establish a home, bring up children and to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. The judgment of the court below is contrary, also, to the holding in *Pierce* v. *Society of Sisters*, 268 U. S. 510, where the Oregon Compulsory Education Law requiring all children to attend *public* schools unreasonably abridged the constitutional right of parents to direct the upbringing and education of children under their control. See also *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589; and *Berea College* v. *Kentucky*, 211 U. S. 45, 67.

The sound and constitutional rule is that the liberty of the parent may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. Determination by the Legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts. *Lawton* v. *Steele*, 152 U. S. 133, 137. See *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152; *Schneider* v. *State*, 308 U. S. 147, 162-164; and *Herndon* v. *Lowry*, 301 U. S. 242.

Before these inherent freedoms can be abridged there must be presented some clear and present danger that the act will immediately invade rights of others and be inconsistent with the welfare of the children, and be immedi-

ately inconsistent with the peace and safety of the state. *Bridges* v. *California*, 314 U. S. 252. Admittedly there is no clear and present danger that the evil will result that is claimed by the state in this case. Also there is no rational relation between the ends aimed for and the means employed by the ordinance. See Freund, *The Police Power*, pp. 133, 497.

The statute is not regulatory but is clearly unconstitutional and void because it is absolutely prohibitory as construed and applied to activity of the appellant and her minor charge.

Mr. Justice Black, speaking for this Court in the opinion in *Jamison* v. *Texas* (— U. S. —, 63 S. Ct. 669, decided March 8, 1943), said:

> "• • • But one who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature as well as by the spoken word."

Ordinances of Los Angeles, Milwaukee and Worcester containing prohibitory provisions were declared invalid and unconstitutional in *Schneider* v. *State*, *supra*. In *Hague* v. *C. I. O.*, 307 U. S. 496, 501, 518, the ordinance declared unconstitutional forbade any person to "distribute or cause to be distributed or strewn about any street or public place any newspaper, paper, periodical, book, magazine, circular, card or pamphlet." See, also, *Thornhill* v. *Alabama*, 310 U. S. 88, and *Carlson* v. *California*, 310 U. S. 106.

The profound principles set forth in those cases were not lightly considered. The rights being dealt with were realized to be the most delicate, precious and sacred franchises possessed by free men, and were therefore to be

jealously guarded against encroachment. Today, deprived of those rights, half of earth's population groans beneath the lash of the dictator while the other half fights desperately to retain its freedom. The decisions last cited above stand as an exquisite tribute to the God-given LIBERTY they shield for every inhabitant of this "land of liberty", which, though embattled and hard pressed for its existence, nonetheless preserves its identity and steadfastly refuses to be drawn into the quagmire of oppression and despotism.

What this Court has said with reference to the need to preserve fundamental rights of each inhabitant of this land against encroachment not only means that adults shall freely enjoy those rights but the principle applies with equal force to the oncoming generation. Having previously determined that an adult has the right peacefully to engage in the work carried on by appellant here,[1] by what force of reason can it be said that a child does not have the same right?

If the parent is considered to have that inviolable right to worship ALMIGHTY GOD by affirmatively carrying into operation God-given commandments written in His Word for His covenant-bound servants,[1] how can it be fairly contended that a child does not have a similar right when similarly bound in covenant to do the will of the Eternal God?

The Federal Constitution created the federal governing establishment primarily for the purpose of protecting the sovereign PEOPLE of the United States of America in *their* exercise and enjoyment of the "blessings of liberty" both for themselves *and 'their posterity'*.

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[1] *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Jamison* v. *State*, • • • U. S. ——, 63 S. Ct. 669; *Largent* v. *State*, —— U. S. ——, 63 S. Ct. 667. As to the right to distribute literature on the street, see also *Hague* v. *C. I. O.*, 307 U. S. 496; *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106.

The document creating that federal government impliedly freed the *federal government* (including every federal employee as such) from any sort of imposition or restraint by state law upon the execution of its powers and duties regularly performable *in the public interest*. The same document expressly restrains and estops the *federal government* from encroaching upon the fundamental personal rights of the sovereign people, which restraint and estoppel have likewise been expressly extended and made applicable to the respective state governments, including every local governing agency authoritatively created and operated within each state.

Here it cannot be denied that appellant was exercising a *federal* right secured impliedly by the United States Constitution, even as every federal employee exercises the right to perform assigned duty in the public interest. By the same token, every inhabitant of the land is protected in the exercise of constitutionality guaranteed personal rights. The rights of the sovereign people, collectively and individually, are equally secure with the rights of the people's agent, the federal government, against abridgment under the federal compact.

The argument that the statute at bar was designed to protect the morals of young children carries no weight here because the evidence shows that the child was then and there in the watchful care of her guardian who stood with her, and was no more exposed to the dangers of the street than were children of others—children accompanied by parents or guardians on those very streets, on pleasure and business errands. To the contrary, it must be admitted that her activity there in announcing the message of God's kingdom would have a wholesome effect, both upon the child and upon those who were responsible for shielding her from harm, as well as upon all others who saw her acting as she was or

accepted of the message she tendered to them in *their* interest.

Since when has it become a crime in this "Christian nation" for a little girl to say politely to her neighbors, "Remedy for world distress; read The Watchtower"?

The Godly message contained in the literature tendered by this little one to pedestrians is vitally *needed* by all who sigh, cry and mourn now because of the unmatched distress that afflicts all peoples of earth and who can be made glad by learning of the bright hope for a permanently better world announced by this little girl. The tendered message is irrefutably a public benefit, is of unparalleled importance in this hour of strain, rather than a public menace!

Parents and guardians allowing their children thus to serve ALMIGHTY GOD and perform a real public *service* are undeniably to be *commended* rather than *condemned.*

The statute has been construed so as to read, in effect, as follows: 'It shall be unlawful for any child (minor) to worship Almighty God within the City of Brockton.' If the statute expressly so provided, all persons—even the least informed—would admit that it was void and a nullity. From the construction given the ordinance and its application in this case it must be conceded that it is unconstitutional and void for the reason that it abridges and prohibits worship of ALMIGHTY GOD by any minor and denies the right of the parent or guardian to direct that minor in the way he (or she) should go.

Conclusion.

For sake of brevity, reference is here made to Petition for Appeal filed in this cause, with which we incorporate by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that substantial federal questions were presented before the Su-

preme Judicial Court of the Commonwealth of Massachusetts.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of the court, because the courts below disposed of important and substantial federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted and sound course of the judicial procedure as to call for this Court's power of supervision to halt the same.

Respectfully and confidently,

(S.) ALFRED A. ALBERT,
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Boston, Massachusetts;
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APPENDIX.

SUPREME JUDICIAL COURT OF COMMONWEALTH OF MASSACHUSETTS.

COMMONWEALTH

v.

SARAH PRINCE. (and Two Companion Cases Against the Same Defendant).

Plymouth. November 2, 1942.—February 15, 1943.

Present: FIELD, C. J., DONAHUE, QUA, COX, & RONAN, JJ.

Minor. Constitutional Law, Freedom of the press, Religion, Police power, Public place, Self incrimination. *Way,* Public: distribution of literature, "street trade." *Sale,* by minor.

Complaints heard in the Superior Court by *Hayes,* J., a District Court judge sitting under statutory provisions.

QUA, *J.*

There was evidence tending to show the following: On the evening of the day named in each of these three complaints the defendant was on a public street in Brockton with her niece, one Betty M. Simmons, a girl in her ninth year, of whom the defendant was the custodian. Both the defendant and the child belonged to a religious sect known as "Jehovah's witnesses" and as such regarded themselves as "ordained ministers" of God. Betty carried a "magazine bag" on which was printed "Watchtower explains the Theocratic Government" "5c a copy." In the bag were copies of the religious publications "Watchtower" and "Consolation." Betty held up a copy of each in her hand. She testified that she was "taking contributions" of five cents for each magazine, or more "if people should give more"; that she was not selling them; that on that night she did not receive any contributions or give any magazines away; that when she had received "contributions" she gave all the money to the defendant; and that the defendant had given her the bag

and the magazines. The defendant admitted at the trial that she had given Betty the bag and the magazines and testified that she told Betty "where to stand."

There was further testimony by the defendant and witnesses called by her to the effect that a person interested could obtain a copy of a magazine without paying the five cents; that the enterprise of distributing the magazines was not carried on for profit but was a religious and charitable enterprise; and that she and her children were on the street corner for no other reason "but to tell the people of the one place of safety, that is in the kingdom of God under Christ that we have prayed for."

There was also evidence from which it could have been found that on the evening in question the defendant, when asked by the supervisor of attendance to give him Betty's name, refused to do so, although she knew he was such officer and that he desired the name to aid in the enforcement of the law. There was evidence that the supervisor insisted that he did not already know Betty's name; that during the interview he said that he had a right to arrest the defendant; and there was evidence that on a previous occasion he had explained to her that it was against the law to allow children on the street selling magazines.

General Laws (Ter. Ed.) c. 149, s. 69, as amended by St. 1939, c. 461, s. 7, provides in part that "No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspapers, magazines, periodicals or any other articles of merchandise of any description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place." Section 77 provides that ss. 69 to 73 shall be enforced by supervisors of attendance and police officers and vests the former with "full police powers for the purpose." Section 79 provides in part that any person "who refuses to give" to a supervisor of attendance "such information as may be required for the proper enforcement of sections sixty to seventy-four, inclusive, shall be punished * * *" Section 80 provides that "Whoever furnishes * * * to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to

seventy-three, inclusive * * * shall be punished * * *." Section 81 provides that "Any * * * custodian having a minor under his control who * * * permits such minor to work in violation of any provision of sections sixty to seventy-four, inclusive * * * shall * * * be punished * * *."

One Perkins, supervisor of attendance of the schools of Brockton, made these three complaints against the defendant charging respectively that on December 18, 1941, at Brockton the defendant (first complaint, for violation of s. 79) "did refuse to give to George S. Perkins, attendance officer of said Brockton, certain information, to wit: the name and age of Betty M. Simmons, a minor under the age of eighteen years, such information being required for the proper enforcement of the law"; (second complaint, for violation of s. 80) "did furnish to one Betty M. Simmons, a girl under the age of eighteen years, certain articles, to wit: magazines, she, the said Sarah Prince well knowing that the said Betty M. Simmons was to sell the said magazines unlawfully"; and (third complaint, for violation of s. 81) "was the custodian of Betty M. Simmons, a minor, and did permit the said Betty M. Simmons to work contrary to law." Upon appeal to the Superior Court the complaints were tried by a judge without a jury, who found the defendant guilty on all three complaints.

The questions presented in various forms by the defendant's exceptions and argued before us are whether there was any evidence to warrant the findings that the defendant had violated the statutes as charged, and whether on their face, or as applied in these cases to the facts that could warrantably be found, the statutes underlying the three complaints are unconstitutional.

The defendant's contention that the statutes involved do not apply to her activities and those of Betty rests in general upon the argument that these statutes were aimed at the regulation of street trades of well known types commonly carried on by children for money, and that they were not intended to regulate the distribution without profit of religious publications by those who regard the spreading of their beliefs in this way as a command of God and hence

as a religious and moral duty. We are not convinced that this contention is sound. By way of caution we must remember that the trial judge might not have accepted as wholly true the testimony of the defendant and her witnesses as to their religious beliefs or as to the philanthropic character of their undertaking. But if he accepted it in full, we still think a finding was warranted that the law had been violated. It is no doubt true in a broad sense that the statutes were directed at the regulation of certain ordinary street trades. But this will not justify us in excluding from their operation acts that come within their literal terms and that may involve the very evils intended to be curbed. To do this would be to rewrite the statutes and to insert in them exceptions which the Legislature could have inserted if it had desired that such exceptions should exist. The acts of the defendant could well be found to fall within the literal terms of the statutes and within the allegations of the complaints. Section 69, as amended, contains no exception as to religious magazines. Its words are "any newspapers, magazines, periodicals or any other articles of merchandise of any description." The judge could find that if a passerby should hand over five cents in accordance with the sign on the bag and should receive a magazine in return, a sale would be effected. The judge was not required to accept the defendant's characterization of that transaction as a "contribution." He could believe that selling the literature played a more prominent part in the enterprise than giving it away. He could find that the defendant furnished the magazines to Betty, knowing that the latter intended to sell them, if she could, in violation of s. 69. There is nothing in that section that restricts its scope to selling with an ultimate net profit in view. There is nothing in any of the sections on which these complaints rest that requires an employment of the minor, in the sense in which the work employment is used in the law of master and servant, as a condition of criminal responsibility. The judge could find that the defendant permitted Betty to "work" in violation of s. 81. The "work" mentioned in s. 81, in so far as that section refers to s. 69, is the selling, exposing or offering for sale prohibited by s. 69, whether or

not that is carried on under a technical employment or for a wage. And, finally, we cannot say that the evils at which the statutes were directed attendant upon the selling by children of newspapers, magazines, periodicals, and other merchandise in streets and public places do not exist where the publications are of a religious nature. It seems apparent that they may or may not exist in particular instances according to the circumstances just as they may or may not exist in particular instances according to the circumstances where the selling is of publications of a secular nature. The defendant has called to our attention a number of decisions holding that variously worded statutes relating to peddlers and other vendors were not intended to apply to the activities of "Jehovah's witnesses." Perhaps of these cases the one nearest to the present case is *State* v. *Richardson*, 27 A. 2d 94 (N. H. 1942). But we cannot regard any of them as decisive of the true construction of our own statutes.

We are of opinion that these statutes as here construed do not infringe upon the constitutional guaranties of freedom of the press and of religion. Under our constitutional system freedom of the press and freedom of religion are rightly accorded a highly preferred position in the struggle of competing interests, but it does not follow that the channels through which these freedoms are exercised may not be affected and regulated in some degree by enactments under the constitutional powers of government designed to promote the public health, safety or welfare. The statutes under which these prosecutions are brought are derived from sections first enacted as part of St. 1913, c. 831. That statute was entitled "An Act to Regulate the Labor of Minors." Its title correctly indicates its content. It contains many sections obviously intended to protect children against hazardous occupations, to insure that they shall not be permitted to work in particular trades or processes or at hours considered detrimental to the health or morals of minors of various ages, and to secure proper school attendance. Certain sections are devoted to "Street Trades." These provisions belong to a type of legislation long regarded as within the duty of the State to protect the health, morals, and welfare of its people. Common-

wealth *v.* Hamilton Manuf. Co. 120 Mass. 383; Commonwealth *v.* Riley, 210 Mass. 387; affirmed, Riley *v.* Massachusetts, 232 U. S. 671. Commonwealth *v.* John T. Connor Co., 222 Mass. 299. Muller *v.* Oregon, 208 U. S. 412. There have been examples of such legislation in this Commonwealth for a century. See St. 1842, c. 60. We think that freedom of the press and of religion is subject to incidental regulation to the slight degree involved in the prohibition of the selling of religious literature in streets and public places by boys under twelve and girls under eighteen and in the further statutory provisions herein considered, which have been adopted as means of enforcing that prohibition. These cases are within the principle of such recent decisions as Commonwealth *v.* Pascone, 308 Mass. 591, 594-598, certiorari denied, 314 U. S. 641; Cox *v.* New Hampshire, 312 U. S. 569; Valentine *v.* Chrestensen, 316 U. S. 52; Manchester *v.* Leiby, 117 F. 2d 661, certiorari denied, 313 U. S. 562; and Busey *v.* District of Columbia, 129 F. 2d 24. Moreover, it would seem that the statutes as applied in the cases now before us are constitutional under all the opinions in Jones *v.* Opelika, 316 U. S. 584. The cases of Lovell *v.* Griffin, 303 U. S. 444, Hague *v.* Committee for Industrial Organization, 307 U. S. 496, Schneider *v.* State, 308 U. S. 147, and Cantwell *v.* Connecticut, 310 U. S. 296, upon which the defendant relies, seem to us distinguishable.

The defendant makes the further contention as to the first complaint (for refusing to give the attendance officer the name and age of Betty Simmons) that she is now to be punished for refusing to furnish evidence against herself. This contention requires examination. Article 12 of the Declaration of Rights of the Commonwealth provides in part that "No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself." In Emery's Case, 107 Mass. 172, at page 182, Mr. Justice Wells, speaking with the approval of all members of this court, said that the clause "or furnish evidence against himself" may be presumed to be intended to add something to the significance of that which precedes." He continued, "Aside from this consideration, and upon the language of the proposition

standing by itself, it is a reasonable construction to hold that it protects a person from being compelled to disclose the circumstances of his offence, the sources from which, or the means by which evidence of its commission, or of his connection with it, may be obtained, or made effectual for his conviction, without using his answers as direct admissions against him. For all practical purposes, such disclosures would have the effect to furnish evidence against the party making them. They might furnish the only means of discovering the names of those who could give evidence concerning the transactions, the instrument by which a crime was perpetrated, or even the *corpus delicti* itself." He added that "Both the reason upon which the rule is founded, and the terms in which it is expressed, forbid that it should be limited to confessions of guilt, or statements which may be proved, in subsequent prosecutions, as admissions of facts sought to be established therein." There was no evidence that the defendant was asked Betty's age. Plainly her conviction on the first complaint was based solely upon her refusal to disclose Betty's name. It might be argued that Betty's name in itself had no tendency to incriminate the defendant, and was not an element of proof in the prosecution against her. On the other hand, the course of the evidence at the trial, including Betty's own testimony, made it clear that she was a witness who could, if the defendant were guilty, testify to every single element of proof necessary to convict the defendant on the second and third complaints. Moreover, by the terms of the statute upon which the first complaint is based the right of the supervisor of attendance to compel the defendant to answer his question was predicated upon the assumption that the answer was "required for the proper enforcement of sections sixty to seventy-four, inclusive." Under the circumstances of this case an answer to the question would have furnished to the Commonwealth ready means for producing all the evidence required to convict the defendant upon the second and third complaints. The supervisor of attendance was in effect asking the defendant to help him secure the Commonwealth's principal witness in order to prosecute the defendant. If the defendant can be convicted for not answering such a question,

why could not a statute be enacted in effect requiring every person suspected of crime to furnish the police a list of all the witnesses whose testimony would convict him? We do not see how we can uphold the present conviction on the first complaint without overturning the construction of the Constitution given after careful consideration in Emery's case. We are not ready to take that step. People *v.* Argo, 237 Ill. 173. People *v.* Spain, 307 Ill. 283, 291. People *v.* Newmark, 312 Ill. 625, 632. State *v.* Farmer, 46 N. H. 200, 202. Counselman *v.* Hitchcock, 142 U. S. 547, 585.

The result here reached under the circumstances of this case does not mean that a witness can refuse to testify to every fact; harmless in itself, which by any possibility might in the course of further investigation lead to the discovery of other facts and so finally to the unearthing of some evidence having a tendency to incriminate him. This decision rests upon the facts of this case and upon the direct connection between the question asked and the securing of the evidence required to convict upon the second and third complaints, so that here if the defendant had answered it could truly have been said that she herself had helped to furnish the incriminating evidence.

It does not necessarily follow from what has been said that the duty of keeping records of, or of disclosing, certain specified acts, or of disclosing the mere identity, of the actor or of the instrumentality employed by him, imposed by certain statutes upon persons engaged in certain occupations or persons accepting licenses or others, where the duty is not dependent upon any criminal quality in the facts required to be recorded or disclosed, violates the Constitution. Thus statutes imposing a penalty upon the driver of a motor vehicle who goes away after an accident without making known his name and the number of his vehicle (see G. L. (Ter. Ed.) c. 90, s. 24, as amended) have been held not to require self incrimination. Ule *v.* State, 208 Ind. 255. Ex parte *v.* Kneedler, 243 Mo. 632. State *v.* Sterrin, 78 N. H. 220. People *v.* Rosenheimer, 209 N. Y. 115. See Commonwealth *v.* Horsfall, 213 Mass. 232; Opinion of the Justices, 271 Mass. 582, 595-596; United States v. Sullivan, 274 U. S. 259; United States *v.* Mulligan, 268 F. 893. It would be impracticable to attempt at this time a full discussion of the

possible distinctions. The subject is treated at large in Wigmore on Evidence, (3d ed.) ss. 2259c, 2259d.

The result is that the defendant's exceptions are sustained in the first case (under s. 79) and are overruled in the other cases.

So ordered.

A. A. Albert, for the defendant.

E. R. Drewing, District Attorney, & R. G. Clark, Jr., Assistant District Attorney, for the Commonwealth, submitted a brief.